

(3) Must consider the actions taken by the facility to address the circumstances that may lead FDA to withdraw the exemption.

**§ 507.62 Issuance of an order to withdraw a qualified facility exemption.**

(a) An FDA District Director in whose district the qualified facility is located (or, in the case of a foreign facility, the Director of the Division of Compliance in the Center for Veterinary Medicine), or an FDA official senior to either such Director, must approve an order to withdraw the exemption before the order is issued.

(b) Any officer or qualified employee of FDA may issue an order to withdraw the exemption after it has been approved in accordance with paragraph (a) of this section.

(c) FDA must issue an order to withdraw the exemption to the owner, operator, or agent in charge of the facility.

(d) FDA must issue an order to withdraw the exemption in writing, signed and dated by the officer or qualified employee of FDA who is issuing the order.

**§ 507.65 Contents of an order to withdraw a qualified facility exemption.**

An order to withdraw a qualified facility exemption under § 507.5(d) must include the following information:

- (a) The date of the order;
- (b) The name, address, and location of the qualified facility;
- (c) A brief, general statement of the reasons for the order, including information relevant to one or both of the following circumstances that leads FDA to issue the order:

(1) An active investigation of a foodborne illness outbreak that is directly linked to the facility; or

(2) Conditions or conduct associated with a qualified facility that are material to the safety of the animal food manufactured, processed, packed, or held at such facility.

(d) A statement that the facility must either:

(1) Comply with subparts C and E of this part on the date that is 120 calendar days after the date of receipt of the order or within a reasonable timeframe, agreed to by FDA, based on a written justification, submitted to

FDA, for a timeframe that exceeds 120 calendar days from the date of receipt of the order; or

(2) Appeal the order within 15 calendar days of the date of receipt of the order in accordance with the requirements of § 507.69.

(e) A statement that a facility may request that FDA reinstate an exemption that was withdrawn by following the procedures in § 507.85;

(f) The text of section 418(l) of the Federal Food, Drug, and Cosmetic Act and of this subpart;

(g) A statement that any informal hearing on an appeal of the order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in § 507.73;

(h) The mailing address, telephone number, email address, and facsimile number of the FDA district office and the name of the FDA District Director in whose district the facility is located (or, in the case of a foreign facility, the same information for the Director of the Division of Compliance in the Center for Veterinary Medicine); and

(i) The name and the title of the FDA representative who approved the order.

[80 FR 56337, Sept. 17, 2015, as amended at 81 FR 3718, Jan. 22, 2016]

**§ 507.67 Compliance with, or appeal of, an order to withdraw a qualified facility exemption.**

(a) If you receive an order under § 507.65 to withdraw a qualified facility exemption, you must either:

(1) Comply with applicable requirements of this part within 120 calendar days of the date of receipt of the order, or within a reasonable timeframe, agreed to by FDA, based on a written justification, submitted to FDA, for a timeframe that exceeds 120 calendar days from the date of receipt of the order; or

(2) Appeal the order within 15 calendar days of the date of receipt of the order in accordance with the requirements of § 507.69.

(b) Submission of an appeal, including submission of a request for an informal hearing, will not operate to delay or stay any administrative action, including enforcement action by FDA, unless the Commissioner of Food and Drugs, as a matter of discretion,

## **§ 507.69**

determines that delay or a stay is in the public interest.

(c) If you appeal the order, and FDA confirms the order:

(1) You must comply with applicable requirements of this part within 120 calendar days of the date of receipt of the order, or within a reasonable timeframe, agreed to by FDA, based on a written justification, submitted to FDA, for a timeframe that exceeds 120 calendar days from the date of receipt of the order; and

(2) You are no longer subject to the requirements in § 507.7.

### **§ 507.69 Procedure for submitting an appeal.**

(a) To appeal an order to withdraw a qualified facility exemption, you must:

(1) Submit the appeal in writing to the FDA District Director in whose district the facility is located (or, in the case of a foreign facility, the Director of the Division of Compliance in the Center for Veterinary Medicine), at the mailing address, email address, or facsimile number identified in the order within 15 calendar days of the date of receipt of confirmation of the order; and

(2) Respond with particularity to the facts and issues contained in the order, including any supporting documentation upon which you rely.

(b) In a written appeal of the order withdrawing an exemption provided under § 507.5(d), you may include a written request for an informal hearing as provided in § 507.71.

[80 FR 56337, Sept. 17, 2015, as amended at 81 FR 3718, Jan. 22, 2016]

### **§ 507.71 Procedure for requesting an informal hearing.**

(a) If you appeal the order, you:

(1) May request an informal hearing; and

(2) Must submit any request for an informal hearing together with your written appeal submitted in accordance with § 507.69 within 15 calendar days of the date of receipt of the order.

(b) A request for an informal hearing may be denied, in whole or in part, if the presiding officer determines that no genuine and substantial issue of material fact has been raised by the material submitted. If the presiding officer

## **21 CFR Ch. I (4–1–16 Edition)**

determines that a hearing is not justified, written notice of the determination will be given to you explaining the reason for the denial.

### **§ 507.73 Requirements applicable to an informal hearing.**

If you request an informal hearing, and FDA grants the request:

(a) The hearing will be held within 15 calendar days after the date the appeal is filed or, if applicable, within a timeframe agreed upon in writing by you and FDA.

(b) The presiding officer may require that a hearing conducted under this subpart be completed within 1 calendar day, as appropriate.

(c) FDA must conduct the hearing in accordance with part 16 of this chapter, except that:

(1) The order withdrawing an exemption under §§ 507.62 and 507.65, rather than the notice under § 16.22(a) of this chapter, provides notice of opportunity for a hearing under this section and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter.

(2) A request for a hearing under this subpart must be addressed to the FDA District Director (or, in the case of a foreign facility, the Director of the Division of Compliance in the Center for Veterinary Medicine) as provided in the order withdrawing an exemption.

(3) Section 507.75, rather than § 16.42(a) of this chapter, describes the FDA employees who preside at hearings under this subpart.

(4) Section 16.60(e) and (f) of this chapter does not apply to a hearing under this subpart. The presiding officer must prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. The presiding officer must include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and must include a proposed decision, with a statement of reasons. The hearing participant may review and comment on the presiding officer's report within 2 calendar days of issuance of the report. The presiding officer will then issue the final decision.